

UNITED STATES COURT OF APPEALS

JUN 30 1998

TENTH CIRCUIT

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KENNETH LYNN LLOYD,

Defendant-Appellant.

No. 97-7110
(D.C. No. 97-CV-237-S)
(EOK)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **BRORBY** and **BRISCOE**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Kenneth Lloyd, a *pro se* prisoner, appeals from the district court order

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, or collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

dismissing his petition for relief under 28 U.S.C. § 2255. We deny his motion for a certificate of appealability and dismiss the appeal.

Mr. Lloyd was convicted and is currently serving a prison sentence for being a felon in possession of a firearm shipped and transported in interstate commerce in violation of 18 U.S.C. § 922(g). In his petition for relief he asserted six grounds of error and contended the judgment and sentence of the district court were unlawful. The district court concluded that Mr. Lloyd's section 2255 petition raised the exact issues he alleged in his direct appeal, in which this court affirmed his conviction on all grounds. See United States v. Lloyd, 13 F.3d 1450 (10th Cir. 1994). The court then dismissed the petition on the ground that a defendant may not collaterally address issues raised unsuccessfully on direct appeal absent a supervening change in the law. See United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994); United States v. Cook, 997 F.2d 1312, 1318 n.6 (10th Cir. 1993); United States v. Prichard, 875 F.2d 789, 791 (10th Cir. 1989).

Although Mr. Lloyd alluded in his section 2255 petition to ineffective assistance of appellate counsel, an examination of the record reveals that Mr. Lloyd failed to support this claim with any facts which would distinguish it from his claim of ineffective assistance of trial counsel, which we rejected on direct appeal.

On any application for collateral review, a certificate of appealability will

issue only if the “applicant has made a substantial showing of the denial of a constitutional right.” United States v. Simmonds, 111 F.3d 737, 746 (10th Cir. 1997). We agree with the district court’s determination that Mr. Lloyd’s petition is entirely duplicative of his direct appeal. Because Mr. Lloyd’s petition raises no issues which differ from those raised as part of his direct appeal, he has not made a substantial showing of the denial of a constitutional right.

The certificate of appealability is **DENIED** and the appeal is **DISMISSED**.

ENTERED FOR THE COURT

Stephanie K. Seymour
Chief Judge